IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5661 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIJIBHAI CHINABHAI

Versus

STATE OF GUJARAT (NOTICE TO BE SERVED THROUGH

Appearance:

MR HJ NANAVATI for Petitioners

Mr K G Sheth on instruction of M/S PATEL ADVOCATES for Respondent No. 1

MR PM RAVAL for Respondent No. 4, 5

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 29/09/2000

C.A.V. JUDGEMENT

The petitioners above named have preferred this

petition under Article 226 read with Articles 14 and 16 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside the order dated 29.9.1987 placed at Annexure 'A' passed by the Dy.Executive Engineer. Building & Communication, Veraval Sub-Division of District Panchayat, Junagadh terminating the services of the petitioners w.e.f. 31.10.1987 as being illegal, unjust and unconstitutional. The petitioners have further prayed for a declaration that the petitioners are entitled to be absorbed in the permanent set up of the respondents or as permanent employee of the respondents and consequently they are entitled to all the benefits available to the permanent employee. The petitioners have further prayed for a direction to the respondents to absorb the petitioners permanently as they have rendered their services for more than one year.

2. On receiving the aforesaid petition, notice was issued at the first instance on 29.10.1987 and ad-interim relief to maintain status-quo was also granted limited upto 8.11.1987. The matter was adjourned from time to time and the interim relief was continued till further orders. Thereafter, on 29.10.1990 Rule was issued. In response to the said service of rule, respondents have appeared to contest the petition.

3. I have heard Mr H J Nanavati, learned Advocate for the petitioner and Mr H P Raval, learned Advocate appearing for respondents no.3,4 and 5 and Mr K G Sheth, learned AGP for the State-respondent no.1.

4. The petitioners have set out their case as follows:

That the petitioners were appointed in the month of August, 1986 as labourers in Veraval sub-division of Division No.II of Building and Communication Department of Junagadh District Panchayat. That they were appointed on daily wages of Rs. 17.05 ps. per day. That the petitioners, though have been appointed as daily wagers, have been paid at the end of the month or in the beginning of the succeeding month. That since the date of their appointment, they are in continuous service of the respondent Panchayat and they have worked for more than one year as on the date of the petition. The petitioners have further contended that due to drought situation of the State particularly in Saurashtra region, the respondent State have started relief work at different levels and as part of this relief work, they are required to engage clerks, labourers for effective

functions and for this purpose, the respondent State is giving financial aid to the respondent Panchayat. The petitioners have also stated that though there is enough work with the Panchayat so as to continue the petitioners on the respective posts, the Dy.Executive Engineer of Veraval Sub-Division (respondent no.5) in the present petition, has issued orders dated 29.9.1987 terminating the services of the petitioners w.e.f. 31.10.1987. Copies of the said orders are placed at Annexure 'A' collectively. The petitioners have challenged the said orders on the ground that though there is sufficient work and though the respondent Panchayat requires services of the petitioners, they have terminated the services of the petitioners and, therefore, the orders of termination are illegal. The petitioners have further stated that the work which they were performing was that of a permanent nature and therefore, the petitioners were rendering their services on the said posts for the last one year and therefore, there is no justification for the respondents for terminating the services of the petitioners on the ground of decrease of the work. That the reasons which have been given in the impugned orders at Annexure'A' are vague. That the respondent Panchayat has been engaging persons for relief work in drought affected areas, and therefore, it cannot be said that the work in the department is decreased. That the notices indicate that the services of the petitioners are terminated on the basis of their respective seniority. That the respondent Panchayat has not maintained any seniority list of casual labourers and this Court may direct to produce the same at the time of hearing of this petition. That the orders have been passed in violation of the provisions of the Industrial Disputes Act, 1947. That section 25 (F) of the relates to retrenchment. It says that while passing order of retrenchment, it is necessary to pay the amount of retrenchment allowance. This has not been done and, therefore, the order in question terminating services of the petitioners is illegal. The petitioners, have, therefore, prayed here that the impugned order terminating services of the petitioner placed at Annexure 'A' are illegal and, therefore, they have prayed for quashing and setting aside the said order.

5. As said above, Rule was issued but the respondent did not file affidavit-in-reply at the relevant point of time. During the course of the hearing, learned Advocate for the petitioner has heavily relied on the provisions contained in Section 25(F) showing that it was necessary for the respondent to pay retrenchment allowance at the time when the said order was issued to the petitioners.

A reading of the said order at Annexure 'A' makes it clear that there is a mention that since the work has gone down, it would not be possible for the department to continue the petitioners in the employment and, therefore, their services were terminated w.e.f. 31.10.1987 and the orders were passed on 29.9.1987. The orders further say that termination orders have been passed according to seniority and if and when respondent department may require services, then there would be further appointment considering the seniority of the retrenched employees. It is further indicated that the petitioners should collect their dues in accordance with section 25(F) of the Industrial Disputes Act from the Dy.Executive Engineer on 7.11.1987. These orders are not in dispute. Learned Advocate for the petitioner has argued at length that the respondents were required to pay retrenchment allowance in accordance with section 25(F) of the Industrial Disputes Act, 1947 (for short, 'the Act') and this has not been done and, therefore, the orders are illegal. For this purpose, he has relied upon a recent decision of Supreme Court in the case of Management of M.C.D. v. Prem Chand Gupta (AIR 2000 SC 454. There it has been observed that in case of termination of services, payment of compensation was required to be made simultaneously with the order of termination was not a condition precedent and compensation can be paid later on as per Central Civil Services (Temporary Service) Rules (1965). However, there the matter related to interpretation of the rules applicable to the employees of M.C.D. Moreover in the said matter, the initial appointment of the workman was for a period of one year. Thus the workman was not confirmed after one year and after a short break, the workman was reappointed against the vacant post of termination of service of another employee. Therefore, the reappointment was not for a fixed period and the workmen continued to work on the vacant permanent post for further 18 months. He had not completed not less than 240 days of continuous service for one calendar year immediately preceding impugned termination order. There it has been held that the termination amounts to retrenchment and non-payment of retrenchment compensation allowances would render the termination null and void and the workmen was found to to be entitled to reinstatement. In the present case the facts are different. Even, the petitioners themselves have stated that they are daily rated labourers. It has been contended that the appointment was made considering the availability of work. So long as the work is concerned, the services would be liable to be terminated as soon as the work is over. There is no doubt that the retrenchment allowance

is required to be paid in accordance with section 25(F) of the Act in case such provision is applicable. Learned Advocate for the respondent has argued at length that the said provision does not apply to the case before this court. There it has been contended that the petitioners themselves have stated that they are daily rated labourers and they are not regularly appointed as labourers. Simply because the payment is made at the end of the month, it does not change the nature and character of the employment of the petitioners. Here the fact is that the petitioners is daily rated labourers, even according to their case. In that view of the matter, it would be worthwhile to refer decision of this court in Special Civil Application No.5328/87 with Special Civil Application No.5586/87 rendered on 5.11.1999 by this Court (Coram : R K Abichandani, J.). It would be material to note that the facts of the case in the said Special Civil Application are pari materia with the facts of this case. There also it was contended that the retrenchment allowance had to be paid under section 25(F) of the Act as is argued in the present case. Same point was taken by the petitioners for challenging the order passed by the respondents. In fact, it has been contended that in the said matter, orders were passed by the authority which has passed orders in the present case also. Even the judgment shows that the orders were passed on 28/29th September, 1987 by the Dy.Executive Engineer terminating the services from 31.10.1987. There also similar orders were issued for collection of retrenchment allowance. Therefore, the said plea was advanced with respect to non-compliance of section 25(F) of the Act in the said matter. Learned Judge of this Court considered the provisions contained in sub-clause (bb) of clause (oo) of section 2 of the said Act and observed that in those cases, the petitioners were employed for a fixed period of 29 days and, therefore, the aforesaid newly added provisions would apply to the facts of the case. In the present case, the petitioners themselves have said that the petitioners were appointed as daily rated labourers. Therefore, they were not on regular employment on regular posts. In that view of the matter, I am of the view that the present case would be governed by the amended provisions of sub-clause (bb) of clause (oo) of section 2 of the said Act. Thus it is very clear that so far as that provision is concerned, it would not be covered by the provisions of section 25(F) of the Act. Considering the aforesaid amendment, this court has decided in the aforesaid matter that there is no violation of the statutory provision of sub-clause (bb) of clause (oo) of section 2 of the Act which lays down that termination of the service of the workmen as a

result of the non-renewal of the contract of employment between the employer and workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein. In that view of the matter, no relief can be granted against the impugned orders and the petition deserves to be rejected. This was the observation in the said matter.
There the learned Single Judge has also considered the decision in the case of Bhanmati Tapubhai Mulia v. State of Gujarat 37(1) GLR 54 and in the case of State of Gujarat v. P J Kampavat (1991 (1) GLR 848 (SC). Therefore, considering the above decisions of the Supreme Court, this court has already laid down that in cases of employment for a fixed period, provisions of section 25(F) of the said Act will not apply and the termination would not be treated to be retrenchment.

6. Considering the facts of the present case it is clear that the decision rendered in Management of MCD (supra) will not apply to the facts of this case. Similarly, the facts of the case in Special Civil Application No.1752 of 1999 decided by this court (coram: H K Rathod, J.) also appear to be different from the facts of this case. As stated above, the present petitioners themselves have come out with a definite and positive case that they are daily rated labourers. Hence they would get work as and when the work is there and their services would be terminated as soon as the work is over. Here in the impugned order, it is stated that the work has gone done and therefore, termination of services is required. The order further shows that the termination was passed according to seniority in the employment. This shows that 'last come first go' principle has been applied. Therefore, it cannot be treated to be illegal. It is true that the impugned orders contain mention of provisions of section 25(F) of the Act. But simply because there is a narration about section 25(F), it cannot be said that the matter would be governed by section 25(F). It has to be decided on the facts and circumstances of the case. In the present case, it is their say that they are daily rated labourers. Therefore, the amended provisions referred to above will apply in all forces and therefore, it would not be necessary for the respondents to pay to the petitioners the retrenchment allowances along with the order of termination of services. The petitioners have further contended that they have right of being absorbed in the department. If they feel they are having the right of being absorbed, then they should make appropriate representation to the authority concerned and that authority will naturally decide the said

representation in accordance with law, Government circulars/Resolutions and in accordance with the policy of the Government.

7. It is not shown here that the Government has framed any policy to absorb all these persons in regular employment. Moreover, for this purpose, the factual aspect is required tobe considered and it would not be possible for this Court to go into those aspects in this petition. It will be open to the petitioners to make appropriate representation before the appropriate authority for considerations and naturally if such representation is made, the authority will consider the same objectively in light of the background of policy, circulars/resolutions and according to law and decide the same accordingly. So far as this petition is concerned, it is admittedly based on the allegation that the retrenchment allowance has not been paid along with the termination orders. However, provision of Sub-clause (bb) of clause (oo) of section 2 of the said Act, does not require that the order of termination must be accompanied by payment of retrenchment allowances. Therefore, if retrenchment allowance is not paid, the termination cannot be treated to be illegal. I am, therefore, of the decision that the petitioners have not been able to satisfy this court that on the point that the impugned orders are illegal inasmuch as retrenchment allowance has not been paid to the petitioners along with termination orders in accordance with section 25(F) of the said Act. The facts are not disputed that the retrenchment allowance has not been paid along with the termination. But at the same time, it is also a fact that the petitioners were daily rated labourers and, therefore, they would be governed by sub-clause (bb) of clause (oo) of section 2 of the Act and hence the termination would take place in accordance with the contract and in that event, it would not be mandatory for the respondents to pay retrenchment allowance along with the order of termination. In other words, the impugned termination orders would not be treated to be illegal for non-payment of retrenchment allowance along with termination orders. Whether or not there was sufficient work so as to continue the petitioners in employment is a [[[[[question of fact which cannot be undergone by this court while exercising powers and jurisdiction under Article 226 of the Constitution of India. Any way, the impugned orders are not found to be illegal on the aforesaid contention.

8. No other grounds have been pressed. Consequently, there is no merit in this petition and the

same deserves to be dismissed. This petition is accordingly dismissed. Rule discharged. Interim relief stands vacated. No order as to costs.

[D P Buch, J.]

msp.